IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 183 of 2007
With
CIVIL APPLICATION No. 6700 of 2007
In APPEAL FROM ORDER No. 183 of 2007
With
APPEAL FROM ORDER No. 184 of 2007
With
CIVIL APPLICATION No. 6702 of 2007
In APPEAL FROM ORDER No. 184 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHYAM BUILDCON PVT.LTD THRO' ITS DIRECTOR - Appellant(s)
Versus
MUNICIPAL CORP. OF THE CITY OFAHMEDABAD THRO - Respondent(s)

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Appearance : (in AO NO.183 OF 2007)

MR RAKESH R PATEL for Appellant(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 1,

Appearance : (in AO NO.184 OF 2007)

MR D.C.DAVE, ADVOCATE WITH MR. RAKESH R. PATEL FOR Appellant(s) 1,

MR D.G.CHAUHAN for Respondent(s) NO.1

MR AJ PATEL, ADVOCATE WITH MR.SHITAL R.PATEL for Respondent (1)

MR BK DAMANI for Respondent (s) No.2

MR PRASHANT G DESAI for Respondent(s) No.3

MS. TANUJA KACHCHHI, AGP, for Respondent Nos.4 - 5

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 18/09/2007

ORAL JUDGMENT

IN APPEAL FROM ORDER NO.183 OF 2007

1. The present Appeal from Order has been preferred against the order dated 5.4.2007 passed by the City Civil Court, Ahmedabad, below Notice of Motion Ex.7 in Civil Suit No.1235 of 2005 and below Notice of Motion Application in Civil Suit No.1344 of 2005. The present Appeal from Order has been preferred by the original plaintiff in Civil Suit No.1235 of 2005, who is also a defendant in Civil Suit No.1344 of 2005. By the impugned order, the present appellants are restrained from making any construction in the suit premises and the Municipal Corporation of the city of Ahmedabad is directed to decide the dispute regarding Floor Space Index (F.S.I.) as early as possible, but not later than six months from the date of the order passed by the trial Court.

2. It appears that the Suit is filed by the present appellant on the basis of a show cause notice issued by the respondent – Corporation whereby a clarification was sought by the Ahmedabad Municipal Corporation about the rights and

interest in final plot No.613 under the Gujarat Town Planning & Urban Development Act, 1976.

3. It appears from the facts and circumstances of the case that the present appellant is claiming the ownership upon the final plot No.613. Likewise the present opponents, who are also plaintiffs of Civil Suit No.1344 of 2005, are also claiming the ownership upon part of final plot No.613. The opponents herein are also claiming their right of way to approach their property from final plot No.613. It also appears from the map on record that the land belonging to the present appellant (original plaintiffs) and the opponents is situated so nearby that final plot No.613 ought to be kept open for ingress and outgress.

4. Learned Counsel appearing for both the sides have taken this Court to various documents on record, including Sale Deeds of 1933 and 1958, which are the sale Deeds in favour of the present opponents' predecessor in title, or who are the plaintiffs of Civil Suit No.1344 of 2005. Looking to these two documents, which are registered Sale Deeds of the year 1933 and 1958 respectively, it is prima facie clear that the original owners (originally known as Survey No.204/4) are having a well therein. On the other side, the present appellant has also pointed out before this Court that in form “F”

under the Gujarat Town Planning & urban Development Act, 1976, which is known as “re-distribution form”, which reflects the name of the owners of final plot No.613. This form No.”F” is not reflecting the name of the predecessor-in-title of the present opponents, but it reflects the name of predecessor in title of the present appellants. Likewise, it is also stated by the learned Counsel for the present appellant that there are long drawn litigation on revenue side and the present opponents, who are plaintiffs of Civil Suit No.1344 of 2005, have lost their matters on revenue side. The order passed in R.T.S. Appeal No.88 of 2005 dated 27.1.2006, is against the present opponents. Likewise, the order passed in Revision by Collector in Revision application No.42 of 2006 dated 23.4.2007 is also against the present opponents. Likewise, learned Counsel appearing for the appellant has also relied upon documents like 7/12 extract which also reveals the names of the present appellants or their predecessor-in-title. Thus, there are documents on both sides, prima facie. As this is only a notice of motion stage, this court is not analysing much the aforesaid documents and the fine nicety of the facts. The dissection of this fact and the right of the present opponent on a final plot No.613 especially for the usage of Floor Space Index (F.S.I.) and built-up area will be looked into by the Municipal Corporation

of the city of Ahmedabad who has given development permission to the present appellant on the basis that the whole final plot No.613 as if belonging to the present appellants. The development permission finally was given by the Municipal Corporation of the city of Ahmedabad to the present appellant on 3.1.2005. It appears from the facts of the case that immediately, the owners of the neighbouring plot have approached the Ahmedabad Municipal Corporation that if the whole F.S.I. Of final plot No.613 is given to the present appellant it affects the right vested in the present opponents. On the basis of earlier Sale Deeds of 1933 and 1958, it appears that immediately the Ahmedabad Municipal Corporation had issued Notice on 10.6.2005 under the provision of the Gujarat Town Planning & Urban Development Act, 1976, seeking clarification as to the nature of right vested in the present appellant so far as final plot No.613 is concerned.

5. It is contended by learned Counsel appearing for respondent that the final plot No.613 is also belonging to the other persons in pursuance of the earlier Sale Deeds of 1933 and 1958, it will have bearing upon the total floor space index allowed by the Ahmedabad Municipal Corporation to the present appellant. Consequently, it will also have a bearing upon the total built up area allowed by the Ahmedabad Municipal Corporation

to the present appellant.

6. Learned Counsel appearing for the Ahmedabad Municipal Corporaiton has poined out to this court, in detail, about the F.S.I. Permission (1.8 times the area of the plot), as to the built-up area (45 % of the area of plot) and if the final plot No.613 is not to be included in amalgamated area of final plot No.612 and 610, it is stated by the learned Counsel appearing for the Ahmedabad Municipal Corporation that instead of permitted F.S.I. 6822.12 sq. mtrs, it will be 6137.12 sq. mtrs. and instead of built-up area permitted by Ahmedabad Municipal Corporation at 3069.95 sq. mtrs., it will be 2866 sq. mtrs. But, before reducing this F.S.I. and built-up area the notice has been given by the Ahmedabad Municipal Corporation and opportunity of being heard has been given to the present appellants for further clarification about their right on final plot No.613, in pursuance of the representation made by the opponents.

7. Looking to the facts, as stated hereinabove, in my opinion, the trial Court has rightly directed the Ahmedabad Municipal Corporation to dispose of the said show cause notice dated 10.6.2005, within stipulated time, but this Court is reducing the time limit and is directing in modification of that order that the Municipal

Corporation of City of Ahmedabad will decide the said show cause notice after giving adequate opportunity of hearing to the present appellant and opponents on or before 9th October, 2007. Mean while the present appellant can continue with their construction keeping 110 sq. mtrs. built-up area open from what is permitted by the Corporation as on today. Likewise F.S.I. to the extent of 425 sq. mtrs. shall be kept vacant or to that extent the construction will not be done. Learned Counsel appearing for the appellant submitted that so far as F.S.I. is concerned, the present appellant has not claimed the same in sanctioned plans and, therefore, correctly the same is shown as balanced F.S.I.

8. Thus, to the aforesaid extent the order passed by the trial Court is hereby modified. The construction is permitted to the present appellant keeping the aforesaid built up area and FSI open and direction is given to the Corporation to decide the show cause notice on or before 9th October, 2007.

9. This court is not expressing any opinion as to find rights of parties upon F.P. No.613.

10. In view of the aforesaid facts the present Appeal from Order is disposed of. No order as to costs.

11. Civil application No.6700 of 2007 is also disposed of as the main Appeal from Order is disposed of.

APPEAL FROM ORDER NO.184 OF 2007 WITH CA:

12. In view of the order passed in Appeal from Order No.183 of 2007, this Appeal from Order is disposed of.

13. Civil Application No.6702 of 2007, filed in AO No.184 of 2007 is also disposed as the main Appeal from Order is disposed of.

(D.N.PATEL, J.)

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